



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 28, 2003

Ms. Maleshia Brown Farmer
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-7724

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190140.

The City of Fort Worth (the "city") received a request for the Fort Worth Human Relations Commission's file pertaining to the requestor. You state that the city has released a portion of the information. You claim, however, that information relating to mediation and efforts at conciliation is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The information you have submitted as Exhibit D consists of mental health records that are subject to chapter 611 of the Health and Safety Code. Section 611.002 of the Health and Safety Code provides "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Health & Safety Code § 611.002. *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). The information in Exhibit D is within the scope of section 611.002 and may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.

Next, we address your claim under section 552.101 with respect to the remaining submitted information. You inform us that the Fort Worth Human Relations Commission (the "city commission") was created under chapter 21 of the Labor Code. *See* Labor Code § 21.152 (providing for creation of local commissions). You state that in compliance with chapter 21, both the federal Equal Employment Opportunity Commission (the "EEOC") and the Texas Commission on Human Rights (the "state commission") have deferred jurisdiction to hear complaints to the city commission by written agreements. *See* Labor Code §21.154 (authorizing deferral of jurisdiction to local commissions); *see also* 40 T.A.C. §325.4 (authorizing cooperative agreements between state and local commissions). Under section 21.152 of the Labor Code, the city commission is a local agency authorized to investigate and resolve complaints. *See* Labor Code §§ 21.154 (authorizing local commission to which complaint is referred or jurisdiction is deferred to receive, investigate, conciliate, or rule on complaint), .204 (relating to investigation of complaint by state commission).

You claim that the remainder of the requested information is excepted from disclosure pursuant to section 552.101 in conjunction with sections 21.303, 21.304, and 21.305 of the Labor Code. Section 21.304, which relates to public release of information obtained by the state commission, provides as follows:

An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter.

Labor Code § 21.304. In this instance, the requestor is a party to a complaint filed under section 21.201 of the Labor Code. *See* Labor Code § 21.201(a) (person claiming to be aggrieved by unlawful employment practice or person's agent may file complaint with state commission). Section 21.305 of the Labor Code applies concerns the release of state commission records to a party to a complaint filed under section 21.201 and provides:

(a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

Labor Code § 21.305. At section 327.9 of title 40 of the Texas Administrative Code, the state commission has adopted rules that govern access to its records by a party to a complaint. Section 327.9 provides:

Pursuant to the limitations established by the Texas Labor Code, §§ 21.304-21.305 (formerly Texas Revised Civil Statutes Annotated Article 5221k, § 8.02(a)), the executive director shall, on written request of a party to a complaint filed under the Texas Labor Code, § 21.201 (formerly Texas Revised Civil Statutes Annotated Article 5221k, § 6.01(a)), allow the party access to the commission's records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

- (1) following the final action of the commission, a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or
- (2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law.

40 T.A.C. § 327.9. Section 327.10 of title 40 also governs public access to state commission records and provides:

- (a) No officer or employee of the commission may make public any information obtained by the commission under its authority under the Texas Labor Code, §§ 21.201-21.207 (formerly Texas Revised Civil Statutes Annotated Article 5221k, § 6.01), except as necessary to the conduct of a proceeding under this Act.
- (b) No commissioner or employee of the commission may make public, without the written consent of the complainant and respondent, information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, alternative dispute resolution, conciliation, or persuasion, whether or not there is a determination of reasonable cause.

40 T.A.C. § 327.10. Moreover, we note that section 21.207(b) of the Labor Code provides in part:

- (b) Without the written consent of the complainant and respondent, the commission, its executive director, or its other officers or employees may not disclose to the public information about the efforts in a particular case to

resolve an alleged discriminatory practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause.

Labor Code § 21.207(b). You inform us that the Exhibit C consists of information regarding efforts at mediation or conciliation between the parties to the dispute at issue, and you state that the city has not received written consent of both parties to release the information in Exhibit C that has been withheld from the requestor. Based on your representations and our review, we determine that the information in Exhibit C that the city has not already released to the requestor is confidential pursuant to section 21.207(b) of the Labor Code and must be withheld under section 552.101 of the Government Code.

In summary, the information in Exhibit D may not be released except in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The remainder of the submitted information that has not already been released to the requestor is confidential under section 21.207(b) of the Labor Code and must be withheld under section 552.101 of the Government Code. Based on this finding, we do not reach your remaining arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 190140

Enc: Submitted documents

c: Ms. Bessie White
P.O. Box 6271
Fort Worth, Texas 76115
(w/o enclosures)